

IN THE COURT OF ADDITIONAL SESSIONS JUDGE  
AIZAWL JUDICIAL DISTRICT, AIZAWL, MIZORAM.

Present : Shri Vanlalenmawia, MJS  
Additional Sessions Judge,  
Aizawl Judicial District, Aizawl.

Sessions Case No. 146 of 2015

Crl Tr. No. 1345 of 2015

State of Mizoram .....Complainant

-Versus-

Shri Rohmingliana  
S/o C.L. Thuama,  
4th IR Bn, Zamuang,  
R/o, Vaivakawn Zohnuai,  
Aizawl, Mizoram. .... Accused person.

APPEARANCE

For the State : Smt. Lalremthangi, Addl. P.P.  
For the accused person : Shri W. Sam Joseph, Advocate.

Hearing : 22.4.2016  
Judgment delivered on : 28.4.2016

**J U D G M E N T & O R D E R**

The accused has been tried for alleged commission of offence punishable u/s 25(1A) of Arms Act.

2. The prosecution story in brief is that on 30.4.2013 SI Ramtharngkhaka submitted a report to the Officer-in-Charge, Kawnpui Police Station to the effect that in pursuance of the information received from reliable sources, on 30.4.2013 at around 2 PM, he and his party, namely SI C. Liansangzela, SI K. Lalmawizuala of Sairang PS, ASI Lalremruata, C/ R. Lalchhanliana, C/ Vanthawmliana and D/G-I H. Lalhmingmawia had recovered 299 live rounds of 7.62 mm ammunition and 3 nos. of

grenade from the farm of Rohmingliana of Vaivakawn Zohnuai located at Lengpui kept in a transparent plastic bag and hidden in a pit. Hence, Sairang Police Station Case No. 17/2013 dated 30.4.2013 u/s 25(1A) of Arms Act was registered against Rohmingliana and duly investigated into.

In the course of investigation, the PO was visited and the photo of the PO was taken. 299 live rounds of 7.62 mm ammunition and 3 nos. of grenade were seized in the presence of Shri Liandinga, VCP Sairang and Shri P.C. Engzama, Vice President, Sairang YMA. The statement of the complainant and witnesses were recorded. On the same day, the accused was arrested after informing him the ground of arrest. The accused was interrogated denying that he did not know about the recovered ammunition and grenade which had been recovered from his farm located at Lengpui. However, the statement of Hmingthankhuma S/o Lalzuia (L) of Kawnpui Chhimveng was that the accused had told him to bury something packed in polythene in a pit while he was working in the farm of the accused in the middle part of April 2013. On 1.5.2013, the accused was forwarded to the Chief Judicial Magistrate, Aizawl for remanding him into judicial custody. 3 rounds of 7.62 mm ammunition and 1 hand grenade were sent to FSL Aizawl for expert opinion. The expert opinion received from the expert held that the grenade was not working as the initiating device was missing, but the ammunition could be fired through AK 47 Automatic Assault Rifles. A prima facie case was found against the accused u/s 25(1A) of Arms Act.

3. Upon committal, charge under Section 25(1A) of Arms Act was framed against the accused, the same was read over and explained in the language known to him, to which he pleaded not guilty and claimed to be tried.

4. In the course of trial, the prosecution produced and examined as many as five out of seven witnesses to prove that the accused had committed the offences punishable under Section 25 (1A) of Arms Act. They were examined and cross-examined. Prosecution witness Hmingthankhuma could not be produced by prosecution due to his dead. Prosecution Witness M.C. Richard Vanlalhnehzova was not produced by the prosecution due to the submission made by the Id. Counsel Shri W. Sam Joseph that he accepted the FSL Report. After closure of the prosecution evidence, the accused person was examined under Section 313 of Cr PC.

**5. Point of determination:**

- a) Whether SI Liansangzela seized 299 live rounds of 7.62 mm ammunition and 3 nos. of grenade from the farm of the accused at Lengpui on 30.4.2013 @ 3:45 PM?
- b) Whether the accused told his attendant Hmingthankhuma to dig a pit and to bury the seized articles at his farm at Lengpui?
- c) Whether the accused is liable to be convicted u/s 25(1A) if Arms Act in contradiction of Section 7 of the Act?

**6. DECISION AND REASONS THEREOF**

P.W.1 SI Ramtharngbaka identified the accused. On 30.4.2013, he and his party went to Khamrang village and met Hmingthankhuma, who informed them that the accused told him to bury something in a pit. With the help of Sairang OC and staff, he went to the farm of the accused at Lengpui and recovered 299 live rounds of 7.62 mm ammunition and 3 nos. of grenade. He submitted FIR at Sairang PS. He proved the FIR at Ext. P-1. On cross examination, he stated that Hmingthankhuma had died in the year of 2013. He knew that Hmingthankhuma was a criminal having criminal cases. He also stated that he had been accompanied by SI C. Liansangzela, OC of Sairang PS, SI K. Lalmawizuala of Sairang PS, ASI C. Lalremruata of Kawnpui PS, C/3 R. Lalchhanliana of Kawnpui PS, C/117 Vanthawmliana of Kawnpui PS and Hmingthankhuma while recovering the seized articles. He denied that Hmingthankhuma had kept the recovered 299 live rounds of 7.62 mm ammunition and 3 nos. of grenade without the knowledge of the accused. However, he admitted that the accused was not present while recovering the seized articles. He also admitted that he had neither examined any witness nor taken part in the investigation.

P.Ws. 2 & 3 P.C. Engzamliana and Liandinga stood as seizure witnesses. According to them, they did not know the exact number of ammunitions. They proved the seizure memo at Ext. P-2 and also the 3 grenades and ammunitions at Ext. M-1. On their cross examination, they admitted that they were not sure whether Ext. M-1 was the properties seized by the Police on 30.4.2013. They further admitted that the

ammunitions and grenades were seized at the Police Station and had no knowledge from whose possession the seized articles were recovered by the Police. They also admitted that the accused was not present while preparing the seizure list and they had not gone through the contents of seizure memo at Ext. P-2. Finally, they stated that the Police personnel had not taken them to any place before putting signature on the Police Station.

P.W. 4 SI C. Liansangzela identified the accused. At the relevant time, he was posted as Officer-in-Charge of Sairang Police Station. According to him, on 30.4.2013, SI Ramtharngkhaka of Kawnpui PS submitted a written FIR to the effect that he and his party had recovered 299 live rounds of 7.62 mm ammunition and 3 nos. of grenade kept in a transparent plastic bag and buried in a pit. Hence, Sairang PS Case No. 17/2013 dated 30.4.2013 u/s 25(1A) of Arms Act was registered and the case was initially investigated by him.

In the course of investigation, he visited the PO, took photo of the PO and seized 299 live rounds of 7.62 mm ammunition and 3 nos. of Grenade in the presence of two reliable witnesses, namely Shri Liandinga and Shri P.C. Engzama. He then arrested the accused after informing the ground of arrest, interrogated him and recorded his statement. But, the accused denied about his involvement in the course of interrogation. He examined the complainant and the available witnesses including Hmingthankhuma who had been deployed to look after the garden of the accused (objected by the Id. Defence Counsel). When he examined Hmingthankhuma, the latter stated before him that he was directed to dig the earth and to bury the seized articles (objected by the Id. Defence Counsel). When he found a prima facie case, he made a prayer to remand the accused for judicial custody. Thereafter, he sent 3 rounds of 7.62 mm ammunition and 1 Grenade to FSL for expert opinion. However, as he got order from DIG (Northern Range) vide Order No. R/CR-286/13/174 dt.3.5.2013, he handed his charge with case diary to Shri Vanlalfaka Ralte, Addl. SP, State Crime Record Bureau (SCRB). He proved the FIR, seizure memo, form of FIR, arrest memo, photo of PO and seized articles as Ext. P-1, P-2, P-3, P-4, P-5 and M-1 respectively. On cross examination, he stated that he had no knowledge of the Vaivakawn PS Case No. 37/2013 dated 3.5.2013 while holding investigation from 30.4.2013 to 8.5.2013.

P.W. 5

## 7. Point No. a)

The first point for determination in this case is that whether the accused abducted the alleged victim from her house at Rengdil village with intention to compel her marriage with him or to have illicit intercourse on 13.12.2013 at around 5 Pm. In evidence of the prosecution, the accused no doubt visited the residence of P.W.2 K. Ramdinpuii on the evening of 13.12.2013, which was also admitted by the accused in his examination under Section 313 of Cr PC. However, there is material contradiction in the evidences of the prosecution witnesses. In the evidence of P.W.2 K.Ramdinpuii, it is stated by her that the accused forced her daughter P.W.3 Lalengpuii to follow him by threatening her if she would not follow him he would shoot her. But, in the evidence of P.W.3 Lalengpuii, she and the accused went out from the house together on their free will. There is also no corroborative statement from the other prosecution witnesses to support the statement of P.W.2 K.Ramdinpuii that the accused would shoot the alleged victim if she would not follow her. There is also no evidence that the accused abducted the alleged victim from her house at Rengdil village with intention to compel her marriage with him or to have illicit intercourse on 13.12.2013 at around 5 Pm. The alleged victim admitted in her cross examination that the accused had no intention to force her to marry or seduced her to illicit intercourse. Hence, the charge framed u/s 366 of IPC against the accused is liable to be acquitted.

## 8. Point No. b)

The second charge made against the accused is whether he criminally intimidated the victim in her house at Rengdil village on 13.12.2013 at around 5 pm. Section 503 of IPC defines criminal intimidation; **'Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.'**

**Explanation-A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section.**

**Illustration-A, for the purpose of inducing B to desist from prosecuting a civil suit, threatens to burn B's house. A is guilty of criminal intimidation.'**

**While Section 506 of IPC is a penal section which states punishment for the offence of criminal intimidation. ' Whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;**

**And if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute, unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.'**

The ingredients of the offence of criminal intimidation what appears are as follows (i) Whether the accused threatened the victim? (ii) Whether such threat consisted of some injury to the victim, reputation or property of the victim? (iii) Whether accused did so with intent to cause alarm to the victim, or to cause that person to do any act which he was not legally bound to do, or omit to do any act which he was legally entitled to do as means of avoiding the execution of such threat.

In the instant case, the evidences of P.W. 2 Smt. K.Ramdinpuui, P.W. 3 Lalengpuui, P.W. 7 Shri J.Zonunsanga and P.W.8 Rozampui are vital since they were all present when the accused came to the residence of P.W.2 K.Ramdinpuui. There is material contradiction in the statements of the said witnesses. In the statement of P.W. 2 K.Ramdinpuui, the accused forced her daughter to follow him intimidating her if she would not follow him he would shoot her, but the statements of the other witnesses particularly in cross examination did not corroborate the statement of PW No. 2. The allegation made against the accused by the prosecution witnesses that the accused had stated before them whether they would want to know how his arms could hit does not attract the offence of criminal intimidation. In the evidence of the alleged victim, particularly in cross examination, the alleged victim stated that she had not seen the accused pointing at them with his service arms. It is also confirmed by P.W. 7 J. Zonunsanga and P.W. 8 Rozampuia that the accused had not pointed towards the said

witnesses with his service arms. Hence, the charge framed against the accused u/s 506 of IPC is liable to be acquitted.

9. **Point No. c)**

Thirdly, the accused has also been charged under Section 8 (2) of MLTP Act.

**Section 7 of MLTP Act states, 'No person shall-**

**(a) .....**

**(b) Consume liquor except on a prescription of a registered medical practitioner, or on a permit granted under the provisions of this Act or the rules made there under, as the case may be.'**

**'Section 8 (5) of MLTP Act further states, 'Any registered medical practitioner shall be competent to examine and prove that a person has consumed liquor or has been in a state of intoxication.'**

**'Section 40(2) of MLTP Act also states, 'For the purpose of this section, a fact is said to be proved only when the court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance or probability'**

On minute scrutiny of the law mentioned above, it is clear that when a person consumes liquor except on a prescription of a registered medical practitioner, or on a permit granted under the provisions of this Act or the rules made there under, he has to be examined by a registered medical practitioner as required by the Act, and the registered medical practitioner has to prove that the person has consumed liquor. In the instant case, there is no evidence of the Medical Officer who issued the medical examination report that he has proved the accused consuming liquor. On this ground alone, the charge made against the accused under Section 8 (2) of the Act is liable to be quashed. It is pertinent to mention here that the consumption of liquor by the accused if it existed has to be believed by the court beyond a reasonable doubt and not

merely when its existence is established by a preponderance or probability. As there is no such evidence of any prosecution witness beyond reasonable doubt that the accused consumed liquor, I do not find any reason to hold that the accused is liable to be convicted under Section 8 (2) of the Act.

10. In the light of the above discussion and reasons thereof, the accused is acquitted under Sections 366/506 of IPC r/w 8(2) of MLTP Act. Hence, the accused shall be set at liberty.

11. Seized material, if any, shall be returned to the Government.

Judgment prepared and delivered in open court on this 21<sup>st</sup> day of March, 2016 under my hand and seal.

**Sd/- VANLALENMAWIA**

Addl. Sessions Judge,  
Aizawl Judicial District,  
Aizawl, Mizoram

**Memo No. \_\_\_\_\_/AD & SJ (A) /2016 : Dated Aizawl, the 21<sup>st</sup> March, 2016**

Copy to :-

1. Shri Lalthazova through Counsel Shri Vanlalnghaka, Advocate.
2. Sessions Judge, Aizawl Judicial District, Aizawl.
3. District Magistrate, Mamit District.
4. Superintendent of Police, Mamit District.
5. Addl. PP, Aizawl District, Aizawl.
6. DSP (Prosecution), District Court, Aizawl.
7. Officer-in-Charge, Kawrthah Police Station.
8. i/c G.R. Branch, District Court, Aizawl.
9. Registration Section.
10. Guard File.
11. Case Record.
12. Calendar Judgment.



**PESHKAR**

**a)**

Point No. 2: 6) PW-1 Smti. Hiramai Bora deposed that the accused Sri Ankur Raj Gogoi forced Kabita to marry him and so she was given in marriage to Sri Ankur Raj Gogoi in one day decision on 20-12-11. She further stated that after one month of her marriage, Kabita used to come to her house and told her and her husband that the accused Sri Ankur Raj Gogoi and his mother Smti. Anima Gogoi used to torture her both physically and mentally for not bringing dowry at the time of marriage. During cross-examination, she deposed that Page 4 of 7 after the marriage and during her lifetime, her deceased daughter came to their house along with her husband for about 6/7 times and till her death, the relation between her and the accused was good. She further stated that the ejahar was written by Smti. Mamoni Bora. Regarding the dowry demanded by the accused, PW-1 as well as her deceased daughter did not inform police prior to the incident. PW-1 did not state before police that the accused as well as his mother used to demand dowry from them and caused harassment. She further stated that as her daughter died, suspecting some foul play, she lodged the ejahar against the accused. It appears that the allegation regarding demand of dowry has been raised for the first time during trial. PW-1 therefore cannot be regarded as a wholly reliable witness. 7) PW-2 Smti. Pushpa Dutta deposed that about one and half years prior to her death, she had told PW-2 that her mother-in-law used to torture her and if she buys new cloths or visits neighbours, her mother-in-law objected and also refused to take anything from her hand and in that way her mother-in-law used to mentally torture her. She further stated that on 20-03-13, at around 8:30 pm, the elder sister of the accused telephoned her and informed that Kabita had taken poison and also said that Kabita had some altercation with her mother-in-law. She further stated that she met the accused Ankur in front of the hospital who said that on the day of occurrence, when he came back home, the mood of Kabita and his mother was not good and on being asked, Kabita told him that she was three months pregnant and there was some altercation between her and her mother-in-law. During crossexamination, she stated that after 5/6 months of the marriage of her sister with the accused, she along with her

husband went to the house of the accused and met the mother-in-law of her deceased sister. When she along with her husband visited the house of the accused, she did not see the mother-in-law and her sister suffering from any ailment. PW-2 came to know from one Smti. Ivay Gogoi over phone that her sister consumed poison. PW-2 came to know from the accused person that there was some altercation between his wife and his mother. PW-2 further stated that prior to the incident, they had not lodged any ejahar against the accused persons regarding the demand of dowry as well as the mental and physical torture committed upon her sister. After two days of the alleged incident, her mother lodged the ejahar. PW-2 further stated that she had stated before police that Page 5 of 7 out of suspicion, they lodged the ejahar against the accused persons regarding the incident. After the marriage and during the lifetime of her deceased sister, the relation between the accused and her sister was good. Therefore, from the deposition of PW-2 also, it appears that the allegation regarding demand of dowry was a later development and that the informant had lodged the case against the accused on suspicion. 8) PW-3 Smti. Mamoni Baruah deposed that Sri Makhan Dutta told her that the accused Ankur told him that his mother Smti. Anima Gogoi administered something to the deceased. Said Sri Makhan Dutta was examined as PW-4, but he did not corroborate the version given by PW-3. He was declared hostile on the prayer of the prosecution and during his further examination, the following statement made allegedly before the police by him was put to him: "On the next day of occurrence, I along with my wife came to Sanjibani Hospital, Dibrugarh and met Ankur Raj, husband of the deceased Kabita. He stated weeping that Kabita asked him to smell her mouth. While he asked her if she took something, she told that she did not take anything herself. Ankur Raj also told me that Kabita and her mother-in-law used to quarrel between them. I came to know from my wife that Kabita was tortured by her mother-in-law". PW-4 denied having made the above statement, but even from the above statement, it appears that PW-4 did not state before the police that the mother of the accused administered poison to the deceased. 9) PW-5 Sri Tapan Gogoi deposed that he met the accused Ankur at the hospital and the accused told him that his mother spoiled his life and thereafter, the accused

Ankur burst into tears. During cross-examination, he stated that prior to the alleged incident, the relation between the accused and the deceased was good and no quarrel took place between them. The version of PW-5 appears to be contradictory in nature. 10) From the above discussion, it is well discernible that no material has emerged to suggest that the accused persons used to mentally and physically torture the deceased in connection with the demands for dowry or otherwise. Rather, since it is a case of poisoning, it appears that the informant side has lodged the case out of suspicion as admitted by the PW-1 & 2. Considering the evidence in its entirety, the probability that the deceased herself consumed Page 6 of 7 the insecticide cannot be ruled out. But at any rate, there is also no evidence to establish that the accused persons abetted the consumption of poison by the deceased. The point is answered accordingly. 11) In the result, I hold that the prosecution has failed to establish its case beyond reasonable doubt and consequently, the accused person is acquitted of the offence under Sections 304-B/302/34 IPC and they be set at liberty forthwith. 12) Previous bail bond shall remain in force for a further period of 6 (six) months under Section 437-A CrPC. Given under my hand and seal of this Court on this the 1 st day of February, 2016. Sessions Judge, Dibrugarh Certified that the judgment is typed to my dictation and corrected by me and each page bears my signature. Sessions Judge, Dibrugarh Page

(i) Whether the accused is liable to be convicted u/s 376(2)(i) of IPC?

12. **Discussion, Decision and Reason of Decisions:**